Supreme Court, U. S.
FILED
JUN 30 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-2035

MELBA TILL ALLEN,

PETITIONER,

VS.

STATE OF ALABAMA,

RESPONDENT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Comes now the State of Alabama by and through the Attorney General of Alabama and respectfully asserts that the Petition for Writ of Certiorari is due to be dismissed and that this matter should not be reviewed by this Honorable Court.

STATEMENT OF THE CASE

This case arose from the Circuit Court of Montgomery County, Alabama after the Petitioner was convicted therein for a violation of Act No. 130 of the Alabama Legislature, Regular Session, 1975, hereafter ethics act. (A photocopy of certain pertinent statues including this act are included with the petition and brief of Mrs. Allen) The Petitioner was sentenced to the penitentary for a term of three years.

The appeal of that conviction resulted in an affirmance by the Alabama Court of Criminal Appeals in an opinion issued November 20, 1979. Application for rehearing was

made by the Appellant and was overruled without opinion on December 18, 1979. A Petition for Writ of Certiorari was filed in the Alabama Supreme Court which was denied without opinion, one justice dissenting with opinion, on February 8, 1980.

The Petitioner filed an Application for stay of sentence pending the present petition in this Honorable Court. That stay was granted on February 22, 1980 for ninety days running from February 8, 1980.

The Petitioner then mailed the present petition and brief (according to certificate) on May 5, 1980. However due to some error the State of Alabama received no copy of the present petition and brief until May 22, 1980 after requesting such of Petitioner's counsel.

ARGUMENT IN OPPOSITION TO THE GRANTING OF THE WRIT

1. The decision and rulings by the Alabama Courts concerning the Petitioner's rights to due process in regard to her trial and conviction under the ethics act were in complete accord with the decisions of this Honorable Court. There is no showing that any violation of constitutional rights occurred by the trial and conviction under this act.

The Petitioner's first reason as to why this writ should be granted deals with a question of whether an Alabama Statute was properly applied to Petitioner's case. Further, the Petitioner's "due process" argument consists of allegations of fact in regard to whether the Alabama Ethics Commission was required to give Mrs. Allen a hearing before charges could have been brought. These state law questions were decided by the Alabama Courts and those decisions were in conformity with the decisions of this Honorable Court.

The Petitioner has cited two cases which she contends are in conflict with the Alabama decision in her case. However, a reading of *Vitarelli v. Scaton*, 359 U.S. 535, 3 L. Ed. 2d 1012, 79 S. Ct. 968 (1959) and *Service v. Dulles*, 354 U.S. 363, 1 L. Ed. 2d 1403, 77 S. Ct. 1152 (1957) will reveal that those decisions are so varied from the issues at bar that they don't merit consideration. Obviously they don't show a conflict sufficient (if any at all) to warrant relief.

The Petitioner also cites *Boddie v. Connecticut*, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971) and *Giaccio v. Pennsylvania*, 382 U.S. 399, 15 L. Ed. 2d 447, 86 S. Ct. 518 (1966) in order to define due process. The Respondent has no quarrel with that definition and only adds that those protections were afforded to this Petitioner.

The Petition now before the Court has only alleged that the decision by the Alabama Courts was in conflict with prior decisions of this Court. The Respondent's opposition to that allegation is discussed above. The Respondent would further offer, as follows, other reasons as to why the writ should not be granted.

Initially, the Respondent would submit that the issue now before the Court is one of little significance or importance as far as practical impact on future litigation. Without a doubt this issue is one which turns on its own particular fact situation and is one which few if any other persons will be affected thereby. By the Petitioner's brief itself it can be seen that the first issue raised is based solely upon whether Mrs. Allen was given an adequate hearing under State law. This question is one which can turn only upon those peculiar facts of the case at bar. This ground alone is sufficient reason for this Honorable Court to find that the case at bar is not of importance sufficient to grant the writ.

2. The rulings of the Alabama Courts in regard to questions concerning the Petitioner's effective assistance of counsel and in regard to prosecutorial misconduct are consistent with the decisions of this Honorable Court and with the provisions of the Fifth, Seventh and Fourteenth Amendments to the Constitution.

In regard to the above reason for granting the writ, raised by the Petitioner, the Respondent would note that not one prior decision of this Honorable Court is cited to show that the decision by the Alabama Courts was in conflict with prior decisions of the Honorable Court. So while the Petitioner begins by saying that the decision below is in "conflict with decisions of this Court" she is unable to cite one case that in any way supports that allegation.

The Petitioner has chosen to review her version of the factual events related to this matter and then only to cite one federal case and other Alabama cases which are *consistent* with the decision below. (Petitioner does city *Olmstead v. U.S.*, 277 U.S. 438, 48 S. Ct. 564, 72 L. Ed. 944, (1928), a case in which the conduct under scrutiny was that of government investigation using wire taps to obtain information and evidence.)

The Respondent fails to see how such argument is in any way sufficient to support a finding that the writ should be granted. On the contrary it is clear that the decision below was correct and obviously consistent with the decisions of this Honorable Court.

There can be no doubt that the decision reached below in regard to the question of whether the Petitioner was afforded effective assistance of counsel was consistent with the principles established in *Gideon v. Wainwright*, 372 U.S. 335, 9 L. Ed. 2d 799, 83 S. Ct. 792 (1963) and those

cases that follow. No case of this Court is cited which shows any conflict between this Court's previous opinions and the decisions below.

Similar to the first issue it is clear that the decision below was correct and no allegation is made that the decision was wrong. Likewise this is again an issue which turns on these particular facts and is one which is not likely to affect persons other than the litigants of this appeal.

The Petitioner has asserted two grounds as to why this writ should be granted. The fact remains that the Alabama Courts have previously decided these questions in a manner consistent with the decisions of this Honorable Court. There being no other grounds asserted the writ should be denied.

The Respondent does not now intend in this brief to argue the merits of this issue. The Respondent would point out that the decision in this case by the Alabama Court is not in conflict with the decisions of this Honorable Court. A close examination reveals no conflict in decisions.

It must be said that the petition is due to be denied.

CONCLUSION

Based on the above showing that the holding by the Alabama Courts in this cause is not in conflict with the decisions of this Honorable Court it is respectfully urged that the Petition for Writ of Certiorari is due to be denied.

Respectfully submitted,

CHARLES A. GRADDICK
Attorney General,
State of Alabama

WALTER S. TURNER
Chief Assistant Attorney General

JAMES F. HAMPTON
Special Assistant Attorney General

COUNSEL FOR RESPONDENT

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AFFIDAVIT OF PROOF OF SERVICE

State of Alabama Montgomery County

I, the undersigned, Assistant Attorney General of Alabama, 64 North Union, Montgomery, Alabama 36130, hereby certify that I have deposited for service three (3) printed copies of a brief in opposition to the Writ of Certiorari to the Honorable Richard D. Horne, 301 St. Joseph Street, P.O. Box 1706, Mobile, Alabama 36601, and forty printed copies to the Clerk of the Supreme Court of the United States.

This the 18th day of June, 1980.

WALTER S. TURNER
Chief Assistant Attorney General
64 N. Union
Montgomery, Alabama

Sworn to and subscribed before me the undersigned, this the 18th day of June, 1980.

NOTARY PUBLIC

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